



Legislation Text

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EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: President Rawlings-Blake

A BILL ENTITLED

AN ORDINANCE concerning
Baltimore Small Business Opportunity Program

FOR the purpose of establishing the Baltimore Small Business Opportunity Program; providing for the certification and decertification of small businesses; establishing certain procurement reserves and procedures; requiring certain reports; prohibiting certain conduct and setting penalties for violations; defining certain terms; affirming the Charter-granted authority of the Board of Estimates; and generally relating to a small business opportunity program for Baltimore City.

BY adding

Article 5 - Finance, Property, and Procurement
Section(s) 27-1 through 27-36, to be under the new subtitle designation,
“Subtitle 27. Baltimore Small Business Opportunity Program”
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 5. Finance, Property, and Procurement

SUBTITLE 27. BALTIMORE SMALL BUSINESS OPPORTUNITY PROGRAM

PART I. DEFINITIONS; GENERAL PROVISIONS

§ 27-1. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED UNLESS THE CONTEXT CLEARLY REQUIRES A DIFFERENT MEANING.

(B) CHIEF.

“CHIEF” MEANS THE CHIEF OF THE MINORITY AND WOMEN’S BUSINESS OPPORTUNITY OFFICE OR THE CHIEF’S DESIGNEE.

(C) INCLUDES; INCLUDING.

“INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF LIMITATION.

(D) LOCAL SMALL BUSINESS.

“LOCAL SMALL BUSINESS” MEANS A BUSINESS THAT IS CERTIFIED AS A LOCAL SMALL BUSINESS UNDER PART II OF THIS SUBTITLE.

(F) LOCAL SMALL BUSINESS RESERVE.

“LOCAL SMALL BUSINESS RESERVE” MEANS ANY PROCUREMENT THAT IS LIMITED UNDER THIS SUBTITLE TO RESPONSES FROM LOCAL SMALL BUSINESSES.

(G) MAJOR PROCUREMENT AGENCY.

“MAJOR PROCUREMENT AGENCY” MEANS:

- (1) THE DEPARTMENT OF PUBLIC WORKS;
- (2) THE DEPARTMENT OF TRANSPORTATION; AND
- (3) FOR COMMODITY CONTRACTS OF LESS THAN \$150,000, THE BUREAU OF PURCHASES.

(G) OFFICE.

“OFFICE” MEANS THE MINORITY AND WOMEN’S BUSINESS OPPORTUNITY OFFICE.

§ 272. RULES OF CONSTRUCTION.

(A) LIBERAL CONSTRUCTION.

THE PROVISIONS OF THIS SUBTITLE ARE TO BE LIBERALLY CONSTRUED TO ACCOMPLISH ITS POLICIES AND PURPOSES.

(B) MANDATORY, PROHIBITORY, AND PERMISSIVE TERMS.

(1) MANDATORY TERMS.

“MUST” AND “SHALL” ARE EACH MANDATORY TERMS USED TO EXPRESS A REQUIREMENT OR TO IMPOSE A DUTY.

(2) PROHIBITORY TERMS.

“MUST NOT”, “MAY NOT”, AND “NO ... MAY” ARE EACH MANDATORY NEGATIVE TERMS USED TO ESTABLISH A PROHIBITION.

(3) PERMISSIVE TERMS.

“MAY” IS PERMISSIVE.

(C) NUMBER.

THE SINGULAR INCLUDES THE PLURAL AND VICE VERSA.

(D) SEVERABILITY.

(1) ALL PROVISIONS OF THIS SUBTITLE ARE SEVERABLE.

(2) IF A COURT DETERMINES THAT A WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SUBSECTION, SECTION, OR OTHER PROVISION IS INVALID OR THAT THE APPLICATION OF ANY PART OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCES IS INVALID, THE REMAINING PROVISIONS AND THE APPLICATION OF THOSE PROVISIONS TO OTHER PERSONS OR CIRCUMSTANCES REMAIN IN FULL FORCE AND EFFECT TO THE MAXIMUM EXTENT PRACTICABLE.

(E) TIME COMPUTATIONS.

(1) COMPUTATION OF TIME AFTER AN ACT, EVENT, OR DEFAULT.

(I) IN COMPUTING ANY PERIOD OF TIME PRESCRIBED BY THIS SUBTITLE, THE DAY OF THE ACT, EVENT, OR DEFAULT AFTER WHICH THE DESIGNATED PERIOD OF TIME BEGINS TO RUN IS NOT INCLUDED.

(II) IF THE PERIOD OF TIME ALLOWED IS MORE THAN 7 DAYS, INTERMEDIATE SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS ARE COUNTED.

(III) IF THE PERIOD OF TIME ALLOWED IS 7 DAYS OR LESS, INTERMEDIATE SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS ARE NOT COUNTED.

(IV) THE LAST DAY OF THE PERIOD SO COMPUTED IS INCLUDED UNLESS IT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, IN WHICH EVENT THE PERIOD RUNS UNTIL THE END OF THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

(2) COMPUTATION OF TIME BEFORE A DAY, ACT, OR EVENT.

(I) IN DETERMINING THE LATEST DAY FOR PERFORMING AN ACT THAT IS REQUIRED BY THIS SUBTITLE TO BE PERFORMED A PRESCRIBED NUMBER OF DAYS BEFORE A CERTAIN DAY, ACT, OR EVENT, ALL DAYS PRECEDING THAT DAY, INCLUDING INTERVENING SATURDAYS, SUNDAYS, AND

LEGAL HOLIDAYS, ARE COUNTED IN THE NUMBER OF DAYS SO PRESCRIBED.

(II) THE LATEST DAY IS INCLUDED IN THE DETERMINATION UNLESS IT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, IN WHICH EVENT THE LATEST DAY IS THE FIRST PRECEDING DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

§ 273. BOARD OF ESTIMATES' AUTHORITY.

(A) AUTHORITY OF BOARD NOT ABROGATED.

NOTHING IN THIS SUBTITLE ABROGATES THE AUTHORITY OF THE BOARD OF ESTIMATES TO AWARD CONTRACTS UNDER ARTICLE VI, § 11 OF THE CITY CHARTER.

(B) BOARD MAY WAIVE MINOR DEFECTS.

AT ITS DISCRETION, THE BOARD OF ESTIMATES MAY WAIVE MINOR DEFECTS AND ERRORS IN A BIDDER'S SUBMISSION.

§ 27-4. RULES AND REGULATIONS.

(A) IN GENERAL.

THE CHIEF MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) FILING WITH LEGISLATIVE REFERENCE.

A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

§ 275. SHORT TITLE.

THIS SUBTITLE MAY BE CITED AS THE "BALTIMORE SMALL BUSINESS OPPORTUNITY PROGRAM".

§§ 27-6 TO 27-10. {RESERVED}

PART II. CERTIFICATION OF SMALL BUSINESSES

§ 2711. QUALIFICATIONS - GENERAL.

THE OFFICE MUST CERTIFY AS A LOCAL SMALL BUSINESS ANY BUSINESS ENTERPRISE THAT:

- (1) MEETS ALL OF THE CRITERIA SET FORTH IN THIS SECTION; AND
- (2) OTHERWISE COMPORTS WITH THE PROCEDURES AND OTHER REQUIREMENTS IN THIS SUBTITLE AND IN THE RULES OR REGULATIONS ADOPTED UNDER THIS SUBTITLE.

§ 2712. QUALIFICATIONS - SPECIFIC CRITERIA.

TO QUALIFY AS A LOCAL SMALL BUSINESS, A BUSINESS ENTERPRISE MUST, AT THE TIME OF APPLICATION AND FOR AT LEAST 3 YEARS IMMEDIATELY PRECEDING THE APPLICATION:

- (1) BE A BUSINESS ORGANIZED FOR PROFIT;
- (2) BE INDEPENDENTLY OWNED AND OPERATED;
- (3) HAVE ITS PRINCIPAL PLACE OF BUSINESS IN THE CITY;
- (4) BE PROPERLY LICENSED AND OTHERWISE AUTHORIZED TO DO BUSINESS;
- (5) NOT BE DOMINANT IN ITS FIELD; AND
- (6) NOT BE A BROKER;
- (7) NOT EXCEED THE SIZE CRITERIA SPECIFIED IN § 27-13 OF THIS SUBTITLE.

§ 2713. QUALIFICATIONS - SIZE CRITERIA.

(A) SALES.

TO QUALIFY, THE ANNUAL GROSS SALES OF THE BUSINESS ENTERPRISE MAY NOT EXCEED \$2,000,000.

(B) WORKFORCE.

TO QUALIFY, THE BUSINESS ENTERPRISE MAY NOT EMPLOY MORE THAN THE FOLLOWING NUMBER OF EMPLOYEES, LISTED BY INDUSTRY:

CONSTRUCTION	49	
EDUCATION	19	
FINANCE		19
FOOD SERVICE	49	
HEALTH CARE		19
INFORMATION		19
INSURANCE	19	
MANUFACTURING	19	
MINING		19
SCIENTIFIC	19	
TECHNICAL	19	
TRANSPORTATION	49	
UTILITIES		19
WAREHOUSING	49	
WASTE MANAGEMENT	49	
WHOLESALE TRADE	49	

§§ 2714 TO 2715. {RESERVED}

§ 27-16. APPLICATION.

(A) IN GENERAL.

APPLICATIONS FOR CERTIFICATION MUST BE SUBMITTED IN THE FORM AND WITH THE INFORMATION THAT THE OFFICE REQUIRES.

(B) FEE.

- (1) THE APPLICATION MUST BE ACCOMPANIED BY A NON-REFUNDABLE APPLICATION FEE.
- (2) THE AMOUNT OF THE FEE IS AS SET BY THE CHIEF FROM TIME TO TIME.

§ 27-17. CERTIFICATION INVESTIGATIONS.

(A) IN GENERAL.

THE OFFICE MAY INVESTIGATE A BUSINESS' OWNERSHIP, MANAGEMENT, QUALIFICATIONS, AND OTHER RELEVANT MATTERS BEYOND FORMAL DOCUMENTATION:

- (1) BEFORE THE INITIAL CERTIFICATION; AND
- (2) DURING CERTIFICATION OR RECERTIFICATION.

(B) SCOPE.

TO THE EXTENT REASONABLY NECESSARY TO ENSURE COMPLIANCE, THESE INVESTIGATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO:

- (1) PERSONAL INTERVIEWS WITH PERSONS HAVING KNOWLEDGE OR RELEVANT INFORMATION RELATING TO A BUSINESS' ELIGIBILITY, CERTIFICATION, OR DECERTIFICATION;
- (2) PERSONAL INTERVIEWS WITH BIDDERS, CONTRACTORS, VENDORS, OR SUPPLIERS INVOLVED IN A JOINT VENTURE OR CONTRACTUAL RELATIONSHIP WITH THE BUSINESS;
- (3) REVIEWING RECORDS PERTAINING TO CERTIFICATION; AND
- (4) CONDUCTING RANDOM, ON-SITE VISITS, AUDITS, OR RELEVANT INQUIRIES.

§ 2718. DECERTIFICATION.

(A) IN GENERAL.

THE OFFICE MAY DECERTIFY A BUSINESS THAT IT DETERMINES NO LONGER MEETS THE CERTIFICATION CRITERIA.

(B) SIZE CRITERIA.

- (1) THE OFFICE MUST DECERTIFY A BUSINESS IF IT EXCEEDS THE SALES OR WORKFORCE SIZE CRITERIA IN § 27-13 OF THIS SUBTITLE.

(2) IF DECERTIFIED UNDER THIS SUBSECTION, A BUSINESS MAY APPLY FOR RECERTIFICATION AT ANY TIME AFTER 1 YEAR FROM THE DATE OF DECERTIFICATION.

§ 2719. CERTIFICATION APPEALS.

(A) OFFICE DETERMINATIONS.

ALL ADVERSE CERTIFICATION DETERMINATIONS BY THE OFFICE MUST:

- (1) BE IN WRITING;
- (2) INCLUDE THE REASONS FOR THE DETERMINATION; AND
- (3) BE SENT TO THE AFFECTED BUSINESS.

(B) APPEAL.

- (1) AN AGGRIEVED PARTY HAS A RIGHT TO PROTEST AN ADVERSE CERTIFICATION DETERMINATION AND SEEK ADMINISTRATIVE REVIEW.
- (2) TO OBTAIN ADMINISTRATIVE REVIEW, THE AGGRIEVED PARTY MUST SUBMIT A WRITTEN PROTEST TO THE CHIEF WITHIN 7 DAYS OF RECEIPT OF THE ADVERSE DETERMINATION.
- (3) THE PROTEST MUST SPECIFY THE REASONS AND FACTUAL GROUNDS OF THE PROTEST AND BE ACCOMPANIED BY ANY SUPPORTING DOCUMENTS.

(C) ACTION BY CHIEF.

WITHIN 15 DAYS OF RECEIPT OF THE PROTEST, THE CHIEF MUST:

- (1) REVIEW THE PROTEST AND ALL RELEVANT SUPPORTING DOCUMENTS; AND
- (2) RENDER A WRITTEN DECISION THAT INCLUDES THE REASONS FOR THE DECISION.

(D) HEARING.

- (1) AFTER ALL DEPARTMENTAL REMEDIES HAVE BEEN EXHAUSTED, THE AGGRIEVED APPLICANT MAY REQUEST A HEARING BEFORE A PANEL OF 3 INDEPENDENT HEARING OFFICERS, WITH 1 PANEL MEMBER TO BE APPOINTED BY THE MAYOR, 1 PANEL MEMBER TO BE APPOINTED BY THE PRESIDENT OF THE CITY COUNCIL, AND 1 PANEL MEMBER TO BE APPOINTED BY THE CITY SOLICITOR.
- (2) THE HEARING OFFICERS MUST BE KNOWLEDGEABLE OF BALTIMORE CITY PROCUREMENT LAWS AND PROCEDURES, INCLUDING THIS SUBTITLE.

§ 2720. BIDDERS LIST.

THE OFFICE MUST COMPILE, MAINTAIN, AND POST ON ITS WEBSITE A COMPREHENSIVE LIST OF

CERTIFIED LOCAL SMALL BUSINESSES.

§§ 2721 TO 2725. {RESERVED}

PART III. PROCUREMENT PROCEDURES

§ 2726. SCOPE.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS SUBTITLE APPLIES TO ALL PROCUREMENTS BY A MAJOR PROCUREMENT AGENCY.

§ 2727. REQUIRED RESERVE.

(A) IN GENERAL.

EACH MAJOR PROCUREMENT AGENCY MUST AWARD A MINIMUM OF 10% OF ITS COMBINED DOLLAR VALUE OF CONTRACTS ISSUED FOR GOODS, SERVICES, OR CONSTRUCTION TO LOCAL SMALL BUSINESSES.

(B) COMPUTATION EXCLUSIONS.

FOR PURPOSES OF THIS SECTION, THE COMBINED DOLLAR VALUE OF CONTRACTS BY A MAJOR PROCUREMENT AGENCY DOES NOT INCLUDE EMERGENCY CONTRACTS, AS DETERMINED BY THE BOARD OF ESTIMATES.

§ 2728. ELIGIBLE PROCUREMENT.

(A) IN GENERAL.

EXCEPT AS SPECIFIED IN SUBSECTION (B) OF THIS SECTION, ANY PROCUREMENT BY A MAJOR PROCUREMENT AGENCY OF GOODS, SERVICES, OR CONSTRUCTION IS ELIGIBLE TO BE DESIGNATED FOR THE LOCAL SMALL BUSINESS RESERVE.

(B) EXCEPTION.

THE LOCAL SMALL BUSINESS RESERVE MAY NOT INCLUDE ANY PROCUREMENT EXCLUDED UNDER § 27-27(B) {"REQUIRED RESERVE: COMPUTATION EXCLUSIONS"}.

§ 2729. PUBLISHING SOLICITATIONS.

A SOLICITATION FOR A PROCUREMENT THAT HAS BEEN DESIGNATED FOR A LOCAL SMALL BUSINESS RESERVE MUST BE PUBLISHED IN THE SAME MANNER AS REQUIRED FOR OTHER SOLICITATIONS.

§ 2730. BIDS.

THE PROCUREMENT OFFICER MUST AWARD A PROCUREMENT CONTRACT DESIGNATED FOR A LOCAL SMALL BUSINESS RESERVE TO THE RESPONSIBLE LOCAL SMALL BUSINESS WHOSE

RESPONSIVE OFFER:

- (1) IS THE LOWEST BID PRICE;
- (2) IF THE INVITATION FOR BIDS SO PROVIDES, IS THE LOWEST EVALUATED BID PRICE; OR
- (3) IS THE BID OR PROPOSAL MOST FAVORABLE TO THE CITY WITHIN THE LOCAL SMALL BUSINESS RESERVE.

§ 2731. {RESERVED}

§ 2732. ANNUAL REPORTS.

(A) REQUIRED.

WITHIN 60 DAYS AFTER THE END OF A FISCAL YEAR, EACH MAJOR PROCUREMENT AGENCY MUST SUBMIT TO THE BOARD OF ESTIMATES A REPORT ON THE OPERATION AND EFFECTIVENESS OF THE BALTIMORE SMALL BUSINESS OPPORTUNITY PROGRAM.

(B) CONTENTS.

THE REPORT MUST INCLUDE:

- (1) THE AGGREGATE VALUE OF ALL CONTRACTS ENTERED INTO UNDER THIS SUBTITLE
- (2) THE PERCENTAGE DIFFERENCE OF THAT AGGREGATE VALUE OVER THE AGGREGATE VALUE FOR THE PRECEDING YEAR; AND
- (3) ANY OTHER INFORMATION THAT THE CHIEF REQUIRES.

§§ 2733 TO 2735. {RESERVED}

PART IV. PENALTIES

§ 2736. PROHIBITED CONDUCT.

NO PERSON MAY:

- (1) FRAUDULENTLY OBTAIN, RETAIN, ATTEMPT TO OBTAIN OR RETAIN, OR AID ANOTHER IN FRAUDULENTLY OBTAINING, RETAINING, OR ATTEMPTING TO OBTAIN OR RETAIN CERTIFICATION UNDER THIS SUBTITLE;
- (2) IN ANY MATTER ADMINISTERED UNDER THIS SUBTITLE, WILLFULLY FALSIFY, CONCEAL, OR COVER UP BY A TRICK, SCHEME, OR DEVICE A MATERIAL FACT OR MAKE ANY FALSE WRITING OR DOCUMENT KNOWING THAT IT CONTAINS ANY FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR ENTRY;
- (3) WILLFULLY OBSTRUCT, IMPEDE, OR ATTEMPT TO OBSTRUCT OR IMPEDE AN AUTHORIZED

OFFICIAL OR EMPLOYEE WHO IS INVESTIGATING THE QUALIFICATIONS OF A BUSINESS THAT HAS REQUESTED CERTIFICATION UNDER THIS SUBTITLE;

(4) FRAUDULENTLY OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER IN FRAUDULENTLY OBTAINING OR ATTEMPTING TO OBTAIN PUBLIC MONEY TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SUBTITLE; OR

(5) MAKE A FALSE STATEMENT TO ANY PERSON OR ENTITY THAT ANOTHER PERSON OR ENTITY IS OR IS NOT CERTIFIED UNDER THIS SUBTITLE.

§ 2737. CRIMINAL PENALTIES.

ANY PERSON WHO VIOLATES ANY PROVISION OF § 27-36 {"PROHIBITED CONDUCT"} IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN 1 YEAR, TO A FINE OF NOT MORE THAN \$1,000, OR TO BOTH IMPRISONMENT AND FINE.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

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